

# **GENERAL SALES AND DELIVERY TERMS AND CONDITIONS OF BT NYLOPLAST B.V. IN 'S-GRAVENDEEL**

## **1. General**

- 1.1 These general sales and delivery conditions apply to all offers, quotations and sales agreements and deliveries, as well as to the provision of services and work of any nature whatsoever, from and with BT Nyloplast B.V., hereinafter referred to as: BT Nyloplast. Any purchase conditions of the counterparty are hereby expressly excluded, unless explicitly agreed otherwise in writing.
- 1.2 An agreement with BT Nyloplast shall only be effective if it is confirmed in writing. An agreement is deemed to have come into effect at the time when BT Nyloplast sends the order confirmation.
- 1.3 The counterparty may only invoke stipulations deviating from these terms and conditions, if and insofar as these have been accepted explicitly and in writing by BT Nyloplast.
- 1.4 If the counterparty refers to their general terms and conditions, these are not applicable, with the exception of those conditions of the counterparty that have been explicitly accepted by BT Nyloplast in writing, and that do not conflict with the provisions in the general terms and conditions of BT Nyloplast.

## **2. Offers and Prices**

- 2.1 All offers from BT Nyloplast are entirely without obligation unless a deadline for acceptance has been set in the offer. If the offers include designs, measurements, drawings, models, samples, descriptions and the like, these shall remain the property of BT Nyloplast, unless expressly stated otherwise in writing, and must be returned to BT Nyloplast at the first request.
- 2.2 The agreed price is based on the cost prices, rates, wages, social security contributions, fees, taxes or other types of costs applicable at the time of acceptance and is exclusive of VAT, packaging, insurance, transport and any mold costs unless expressly agreed otherwise in writing. If one or another may be increased afterwards, BT Nyloplast is entitled to increase the agreed price accordingly.

## **3. Delivery**

- 3.1 Transport of goods "ex warehouse" or "ex factory" is always at the expense and risk of the counterparty from the moment of shipment. The counterparty must insure its interest in the transport itself. In the case of "prepaid" delivery, BT Nyloplast need not transport or have it transported, further than to where the transport used can pass a road that is reasonably accessible. The counterparty is obliged to take receipt of the goods in the vehicle, and to assist in the unloading, failing which BT Nyloplast is entitled to recover the resulting costs from the counterparty.
- 3.2 Delivery times can never be considered fatal but are taken into account as much as possible by BT Nyloplast. In case of non-timely delivery, BT Nyloplast will therefore have to be expressly and in writing be given formal notice.
- 3.3 BT Nyloplast is free to make deliveries in parts.

#### **4. Payment**

- 4.1 Payment must be made no later than 30 days after the invoice date, in a manner to be indicated by BT Nyloplast in the currency in which the invoice is made, unless otherwise explicitly agreed in writing.
- 4.2 BT Nyloplast is entitled to suspend the work or deliveries if the counterparty fails to fulfill its payment obligations.
- 4.3 At all times, BT Nyloplast is entitled, before delivering or continuing the delivery or fulfillment of the agreement, to demand sufficient security for the fulfillment of the payment obligations of the counterparty. Refusal by the counterparty to provide the required security gives BT Nyloplast the right to dissolve the agreement, without prejudice to the right of BT Nyloplast to reimbursement of costs and loss of profit.
- 4.4 The counterparty is never entitled to set-off the amount due by him to BT Nyloplast.
- 4.5 Objections against the height of an invoice do not suspend the payment obligation.
- 4.6 The entire purchase or sale price is in any case immediately due and payable in case of non-punctual payment of the agreed term on the due date, when the counterparty is in a state of bankruptcy, applies for suspension of payments or has been requested under guardianship, when any seizure of the goods or claims of the counterparty are made, and when this dies, goes into liquidation, or is dissolved.
- 4.7 If the counterparty fails to pay an invoice within the term stipulated in article 4.1, then the counterparty is legally in default without any notice of default being required. The counterparty will then owe an interest equal to the statutory interest as, from the due date until the date of payment.
- 4.8 If the counterparty is in default or omission in the (timely) fulfillment of obligations, all reasonable costs incurred in obtaining payment out of court are at the expense of the counterparty. The extrajudicial costs are calculated on the basis of what is customary in Dutch debt collection practice. If, however, BT Nyloplast incurs higher costs for collection that were reasonably necessary, the actual costs incurred will be eligible for reimbursement. Any judicial and execution costs will also be recovered from the counterparty. The counterparty also owes interest on the collection costs due.
- 4.9 If BT Nyloplast applies for the bankruptcy of the counterparty, the counterparty will also owe the costs of the bankruptcy petitioner in addition to the principal sum, interest and extrajudicial costs.

#### **5. Non-attributable shortcoming (force majeure)**

- 5.1 Force majeure exists if the violation of a commitment can not be attributed to BT Nyloplast. There is in any case force majeure if the fulfillment of one or more obligations on the agreed conditions is prevented, seriously aggravated or made more difficult, because BT Nyloplast and/or auxiliary persons, supplier, advisers etc. are affected by circumstances such as natural disaster, serious fire, (nuclear) explosion, war, revolt, strike, occupation, boycott, or any foreign government measure, such as an import, export, supply or production ban.
- 5.2 BT Nyloplast can suspend the obligations under the agreement during the period that the force majeure continues. If it lasts longer than two months, then each party is entitled to terminate the agreement without any obligation to pay damages to the counterparty.

#### **6. Complaints**

- 6.1 The counterparty must inspect the goods carefully and timely on delivery. The counterparty must investigate, whether the quality and/or quantity of the delivered goods corresponds with what has been agreed and meets the requirements that the parties have agreed on in

this respect. Any visible defects must be reported in writing to BT Nyloplast by the counterparty within eight days of delivery, or within eight days of the invoice date.

- 6.2 Any non-visible defects must be reported to BT Nyloplast in writing immediately, but in any case, no later than 14 days after discovery thereof. The report must contain as detailed a description as possible of the defect, so that BT Nyloplast is able to respond adequately. The counterparty must give BT Nyloplast the opportunity to investigate a complaint.
- 6.3 If the counterparty complains in time, this does not suspend its payment obligation. In that case, the counterparty also remains obliged to purchase and pay for the other ordered items.
- 6.4 If it is established that a complaint is unfounded, then the costs that arise, including the research costs, are at the expense of the counterparty.
- 6.5 Notwithstanding the statutory limitation periods, the limitation period for all claims and defenses against BT Nyloplast, and the third parties engaged by BT Nyloplast in the performance of an agreement, is one year.

## **7. Liability**

- 7.1 The counterparty can only assert guarantee obligations in respect of goods supplied by BT Nyloplast, if these have not been assumed by third parties. Its liability will then be limited to defects that result from manufacturing and material defaults. Furthermore, BT Nyloplast voids the warranty obligation, as well as the liability for damage to the delivered goods, if changes are made by third parties and not on behalf of BT Nyloplast, or the delivered goods have been treated or maintained in an improper manner.
- 7.2 BT Nyloplast is not liable for damage resulting from the execution of advice given by them, unless these recommendations directly relate to goods delivered by BT Nyloplast. In other cases, the execution of the advice is at the expense and risk of the requesting counterparty.
- 7.3 BT Nyloplast is only liable for damage suffered by the counterparty, which is directly and exclusively due to the fault of BT Nyloplast, on the understanding that any compensation will be limited to the invoice value of the delivered good to which the complaint/claim relates, or reasonably, given the practices in the industry, should have been insured. In addition, the following restrictions are to be applied:
  - (a) Consequential loss is not eligible for compensation, suffered by anyone. (Business malfunction, downtime and other expenses, loss of income etc.);
  - (b) BT Nyloplast is not liable for damage caused by or during the execution of the work, or the assembly of delivered goods to items that are being worked on or are located in the vicinity of the place where work is carried out.
- 7.4 The counterparty will compensate costs and damage to BT Nyloplast, which for BT Nyloplast are the result of any shortcoming of the counterparty in the fulfillment of his obligations, as well as compensation for all damage caused by him and/or by third parties engaged by him. The counterparty indemnifies BT Nyloplast against claims from third parties on the grounds of industrial and/or intellectual property.
- 7.5 In the event of a complaint from the counterparty, where the complaint has been declared well-founded by BT Nyloplast, BT Nyloplast will take care of:
  - (a) (free) repair of the defects;
  - (b) delivery of replacement goods after receiving back the defective goods;
  - (c) (pro rata) repayment of the paid purchase price or crediting of the already sent invoice, with dissolution by a written statement of the relevant agreement;
  - (d) a compensation to be paid in consultation with the counterparty, in whatever form, on the understanding that the maximum compensation to be paid will never exceed the highest amount that a, b or c would yield.
- 7.6 The counterparty is not entitled to return the delivered goods in respect of unfounded complaints. Costs of returning these are at the expense of the counterparty. BT Nyloplast is

then authorized to store the items at the expense and risk of the counterparty (with a third party).

## **8. Dissolution**

- 8.1 BT Nyloplast is entitled to suspend the fulfillment of the obligations or to dissolve the agreement in whole or in part, if:
- (a) the counterparty does not, not fully or not timely fulfill the obligations under the agreement;
  - (b) in case of suspension of payment or bankruptcy of the counterparty;
  - (c) after the conclusion of the agreement, BT Nyloplast has taken note of circumstances giving good grounds to fear that the counterparty will not fulfill its obligations;
  - (d) the counterparty was requested to provide security for the fulfillment of its obligations under the agreement, when the contract was concluded and this security is not provided or is insufficient;
  - (e) due to the delay on the part of the counterparty, BT Nyloplast can no longer be expected to comply with the agreement under the originally agreed conditions, BT Nyloplast is entitled to dissolve the agreement.

## **9. General retention of title and security**

- 9.1 Upon delivery, the counterparty will only become the owner of the goods delivered or to be delivered by BT Nyloplast under suspensive condition. BT Nyloplast remains the owner of the delivered or still to be delivered goods, as long as:
- (a) the counterparty has not paid the claims of BT Nyloplast in respect of the consideration of the agreements;
  - (b) it shall also remain the owner of the goods delivered or to be delivered, as long as the counterparty has not paid the work performed or yet to be performed from such agreements, and as long as it has not paid claims due to shortcomings in such agreements, including claims in respect of fines, interest and costs.
- 9.2 If the law of the country of destination of the delivered goods has further options for reserving the property than specified in paragraph 9.1 above, it applies between the parties that these further possibilities are deemed to have been agreed on behalf of BT Nyloplast, on the understanding that if it is objectively not possible to determine to which further rules this provision relates, the provisions of paragraph 9.1 above shall continue to apply.
- 9.3 The counterparty, as long as it has not fulfilled the aforementioned claims, is not entitled to establish a right of pledge or a non-possessory right of pledge on the goods delivered by BT Nyloplast and undertakes to declare to third parties who wish to establish such a right on the first request of BT Nyloplast, that it is not authorized to establish a right of pledge. Furthermore, the counterparty undertakes not to sign any deed(s) establishing right of pledge on the goods, in which case the counterparty would be guilty of embezzlement.
- 9.4 On goods delivered that have been transferred to the counterparty by payment and are still in the hands of the counterparty, BT Nyloplast hereby already reserves the rights of pledge as referred to in art. 3: 237 of the Dutch Civil Code, to provide more certainty for claims that BT Nyloplast may have against the counterparty for whatever reason. The authority included in this paragraph also applies to goods delivered by Nyloplast which have been processed or processed by the counterparty, as a result of which BT Nyloplast has lost its retention of title.
- 9.5 In the event that the counterparty fails to comply with any obligation arising from the agreement relating to goods delivered on which retention of title rests or to carry out work with respect to BT Nyloplast, or if there is reasonable fear that it will not do so, BT Nyloplast is entitled to take back the goods. The counterparty hereby authorizes BT Nyloplast to

enter the place where these goods are located and to provide full cooperation for this, under penalty of an immediately due and payable fine of 10% per day of the amount owed by him.

9.6 The counterparty commits itself:

- (a) to insure the goods delivered subject to retention of title, and to keep them insured against damage and loss, and to provide BT Nyloplast with the insurance policy(ies) on first request;
- (b) to pledge the claims on insurers with respect to the goods delivered under retention of title at the first request of BT Nyloplast;
- (c) to pledge the claims that the counterparty obtains against its customers in the resale of goods delivered by BT Nyloplast, under retention of title at the first request of BT Nyloplast;
- (d) to mark the goods delivered under retention of title as the property of BT Nyloplast;
- (e) to cooperate in any other way with all reasonable measures that BT Nyloplast wants to take to protect its property rights with respect to the goods, and which do not unreasonably hinder the counterparty in the normal course of its business.

**10. Intellectual and industrial property**

- 10.1 Changing BT Nyloplast's delivered goods, applying a trademark or image to goods that create the appearance that this concerns items originating from BT Nyloplast, is not permitted. Even if items of BT Nyloplast are not protected by any special right of intellectual or industrial property, the counterparty is not allowed to imitate the goods or give them the opportunity to do so.
- 10.2 If damage is caused by violation of the previous BT Nyloplast or one of its suppliers/contractors, the counterparty is obliged to safeguard and indemnify them and/or their counterparty(ies) in accordance with the aforementioned.
- 10.3 The counterparty is obliged at all times to make accessible goods delivered by BT Nyloplast, if BT Nyloplast judges that this is necessary.

**11. Confidentiality**

Both parties are subject to the statutory obligations applicable to them, obliged not to disclose any confidential information they have received under the agreement, from each other or from another source. Information is considered confidential if this has been communicated by the information provider, or if this results from the nature of the information.

**12. Disputes and applicable law**

- 12.1 The agreement is subject to Dutch law.
- 12.2 All disputes that exist between the parties will only be judged by the competent judge in the district of the registered office of BT Nyloplast.

**13. Location and translation of these conditions**

These conditions have been filed with the Chamber of Commerce in Rotterdam. If a translation of these terms is inconsistent in any way with the Dutch text of these conditions, only the Dutch text of these terms is binding.